The five million loan /

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THE FIVE MILLION LOAN.*

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The granting of public lands by the national government to aid in the construction of railroads, beginning in 1850, did not become an established policy till 1856. In the congressional session of that year, after elaborate debate, thirty grants carrying some 15,000,000 acres were made, about equally divided between the South and the West.

When Minnesota appeared as an applicant for admission to the Union as a state a year later, the moment was naturally regarded as an appropriate one to renew her request for a railroad grant. The fact that the territory had been deprived of a generous benefaction three years before, through no fault of her own, but by the mistake or misconduct of persons tampering with the bill of June 29, 1854, aroused a degree of prejudice in favor of her renewed claim. It was true that the Minnesota and Northwestern Railroad Company was still contesting the right of Congress to repeal the grant; but Congress, having passed the act of repeal, could not charge the grant against Minnesota.

It did not require extraordinary effort to secure the passage on March 3, 1857, of a bill carrying a generous land grant for Minnesota railroads. The bill was peculiar in that it did not make a grant to the state (then territory) of Minnesota, to be disposed of freely by her legislature, but designated in a general way the routes of the roads to be built, and constituted the territory and future state the trustee and agent for the government for its purposes. It provided that the lands, being “every alternate section, designated by odd numbers, for six sections in width on each side of the roads,” could be sold only in batches

of sections, as building progressed, and that all lands 190 not sold for the purposes of the act within ten years should revert to the United States.

If the reader will be at the trouble of tracing on a map of Minnesota the routes named in this act, he will perceive that taken together they formed a well-devised scheme for a primary system of Minnesota railroads. He will remember that northern Minnesota was to remain for many years a wilderness. The system comprised four elements: first, the line of the Great Northern railway, crossing the state westwardly, and its greater branch to St. Vincent on the Red river and international boundary; second, that from St. Paul up the Minnesota river to continue southwest to the Missouri river, with a branch via Faribault to the Iowa line; third, a route from Winona to St. Peter, thence pointing westward; and fourth, a portion of the well-known line of the Southern Minnesota.

The scheme was an ambitious one, in marked contrast with the more reasonable counsel of Governor Gorman, that the first effort be to secure a single road connecting with the outside world. But it was struck out in the boom period preceding the panic which came on in the late summer of the same year. It was no time for timidity nor even moderation in business ventures.

There had been chartered by special legislation, previous to 1857, fifteen railroad companies; and nearly as many more were incorporated in that year. Had all built their contemplated roads, the state would have been thoroughly “gridironed.” Probably all the companies had hopes and some expectation of being aided by land grants. That all would be, was of course impossible. To establish a condition under which the fittest might survive and flourish, the leading spirits of four interests “got together,” and worked out a plan for a railroad system which would reach all the principal centers of business, concentrate the largest possible amount of interest, and eliminate much undesirable competition, political as well as commercial.

Of this “combine” of corporations, three existing and one inchoate, the Honorable Edmund Rice of St. Paul, brother of the Minnesota delegate, was the leader. The incorporators were mostly Minnesota men, among them the head men of both 191 political parties and representatives of the largest towns. The few names of eastern gentlemen indicated the expectation that fiscal co-operation would be needed from that quarter. It was the belief of Minnesota people that the system of roads was to be so greatly under home control that no clique of outside investors could dominate it. The united interests were so influential at Washington that they easily dispersed the slight and disunited opposition and triumphantly carried through the just mentioned bill, virtually conveying to themselves near six million acres of public lands.

Governor Gorman, in the last days of his service, called an extra session of the legislature of 1857 to meet on April 27. From the opening hour all interest centered on three railroad bills, which had been drawn up by the skillful attorneys of the parties chiefly interested. Governor Medary embodied the text of the act of Congress of March 3, granting the lands, in a special message, and counseled strict conformity to its provisions and careful protection of the public interest. A bill accepting the trust of the general government was promptly passed. The conditions of this trust were such that small discretion was left to the Minnesota legislature. There was some skirmishing in the chambers to secure additional branches and locations of routes so as to pass through certain towns, which was quite ineffective. After sufficient delay to allow opposition to expend itself in unwelcome amendments, the three bills were passed in a bunch about the middle of May, by votes practically unanimous. The newspapers of St. Paul abound in allusions to the presence of crowds of outside speculators, “moneyed vultures,” keen for plunder, but their efforts seem to have been confined to looking out for townsite interests, and for railroad connections eastward. Congress had put the division of the land beyond their power.

A proposition submitted to the House early in the session for a consolidated bill had been lost by the odd vote. No sooner, however, had the separate bills been carried through

to third reading than there was a general desire to have them merged to one “omnibus” bill. The House had passed a bill to encourage the destruction of gophers and blackbirds and sent it to the Council for concurrence. The latter body, in 192 committee of the whole, made merry with the measure by amending the title to include the “Sioux Indians,” and Rolette moved its reference to the military committee. On May 20, the Council went into committee of the whole for the further consideration of this bill, and after some time spent therein reported an amendment, striking out all after the enacting clause, and inserting an omnibus railroad bill vesting the land grant in four corporations. The amendment was agreed to and the title changed to correspond. The next day the message of the Council announcing its concurrence in the House bill to encourage the destruction of gophers and blackbirds, with an amendment, was received by the House. A ruling of Speaker Furber that the so-called amendment was not truly such, but was entire new matter, was appealed from effectively, by a vote of 28 to 8. There were but three negative votes on concurrence. The act thus passed and promptly approved, forms chapter I of the Session Laws of 1857, entitled “An Act to execute the trust created by an Act of Congress * * * and granting certain Lands to Railroad Companies therein named.”

The division into three sub-chapters indicates the make-up of the act by simple assemblage. The first of them incorporates the Minnesota and Pacific Railroad Company, and empowers it to build from Stillwater via St. Paul and St. Anthony to Breckenridge on the Sioux Wood river, with a branch from St. Anthony via Anoka, St. Cloud and Crow Wing to St. Vincent, near the mouth of the Pembina river.

The second sub-chapter authorizes the existing Transit Company to build from Winona via St. Peter to the Big Sioux river south of the forty-fifth parallel of north latitude.

The last of the three subdivisions embraces two companies: (1) the Root River Valley and Southern Minnesota Railroad Company, empowered to construct a railroad from La Crescent up the Root river valley to a point of junction at Rochester with the Winona and St. Peter, also another line from St. Paul and St. Anthony, via Minneapolis, up the valley of

the Minnesota river; (2) the Minneapolis and Cedar Valley Railroad Company, authorized to build from Minneapolis via Mendota and Faribault to the south boundary of Minnesota, west of range sixteen.

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To each of the companies severally the act assigns all the estate and interest of Minnesota in the lands granted by Congress in aid of railroad construction for its particular route or routes, under certain conditions. So soon as any of them shall have located its line, it is to have absolute title to one hundred and twenty sections, and thereafter to a like amount whenever twenty continuous miles shall have been completed, to be free of taxes so long as they remain in the possession of the companies; and in consideration of the grants, privileges and franchises conferred, the companies are required to pay annually into the state treasury three per centum of their gross earnings in lieu of all taxes and assessment whatever.

When the legislature of 1857 broke up on the 15th of May, the members dispersed to their homes to congratulate their constituents upon the prospect of the immediate beginning of railroad building and the ensured development of a great system of a thousand miles or more in the course of a few years.

A cloud was soon to cover this bright prospect. The panic of 1857 struck the country late in August. It fell upon the West with extreme violence. Not one dollar could these four Minnesota railroad companies raise. Their interests in the lands were only expectant. They must each survey and locate at least twenty miles before title could pass to a first batch of 120 sections. At five dollars per acre these would be worth $384,000. It would require great faith in a capitalist to lend more than half this sum on wild lands in good times. With millions of acres of railroad lands offering in the market in other states and territories, neither large nor rapid sales could be expected. The Transit Company offered all its lands between Winona and Waseca, some 500,000 acres, at one dollar an acre, and found no buyers.

If the stockholders had been disposed to pay in a large percent of the face value of their shares, the slump in business made it impossible for them. Many of them could not save their private fortunes from the wreck. The people of Minnesota felt sorry for themselves, and extended their sympathy to the members of the corporations which had planned generously for the public advantage and their own.

During the fall months of 1857, the people were occupied 13 194 with the question of ratifying their new constitution, with the election of representatives to Congress, and with the choice of a legislature, which would have the selection of two United States senators. The railroad interests were naturally alert to discover any possible escape from the mire into which they had sunk. They of course had no money. There was almost none in the Territory. The military and Indian disbursements furnished the little in sight. Could the companies but survey and locate each a twenty-mile section of road they would receive each 76,800 acres of land, which could be sold or hypothecated. Could they build and set in operation twenty miles, as many more acres would fall in, and the business begun would yield an income. Population would flow in, cultivation extend, towns develop, and land values, especially those of railroad lands, would mount. In the course of a few years Minnesota would have a great railroad system worth millions which had not cost her a cent.

All that these companies lacked was a start, just a little sum to locate and build, say, fifty miles apiece. The whole state was interested; why should not the state, following the example of the national government, assist these worthy enterprises, of so much account to her? Other states, as Illinois and Missouri, had rendered such assistance to railroad construction. The proposition was not novel.

But there was the state constitution, forbidding the legislature to contract a debt in excess of $250,000, and requiring that, in case a debt were made, the legislature should in the

same act provide for a tax sufficient to cancel it within ten years. A loan of money by the state was out of the question.

The framers of the constitution had borrowed from that of Wisconsin a paragraph reading “The credit of the state shall never be given or loaned to any individual, association, or corporation.” This prohibitory provision furnished a clue. It appeared to suggest that there was such a thing as loaning “credit,” without incurring liability for ultimate payment and thus making a debt. The case of an indorser protected by ample collateral, duly assigned, was quoted. Could not the state take some such part? And a scheme was worked out, by which the state was to furnish her promissory obligations to 195 the railroad companies, who should obligate themselves to pay principal and interest and to secure the state against possible responsibility. The state was merely to furnish “accommodation papers” to wealthy corporations in a pinch for ready cash, taking ample security.

The “Five Million Loan bill” in the eighth Legislative Council, on the 24th of February, 1858, met with no opposition; and it was passed by that body on March 2, by a vote of 24 to 7. Three days later the House of Representatives concurred by a vote of 47 to 24. Some opposition was made, but a favorable report from a select committee of nine secured the passage. Objection was made to such hasty action, one member declaring that the legislature had given more time to changing the county seat of Dodge county than to this important bill. There were then, and later, insinuations, even open assertions, that the legislature bodies had been corrupted. The proof thereof is yet to be revealed. It was not necessary to bride a body of men so willing to believe in a plausible scheme for which their constituents were clamoring.

The bill, thus passed, proposed the adoption of an amendment to the constitution of the state, still awaiting the approval of Congress. The essential portion of this amendment, only, need be given. It was proposed to add to the paragraph above quoted, “The credit of the state shall never be given or loaned, etc.,” for substance, an exception, that to aid the four companies in the construction of their roads, special bonds bearing seven per

cent interest semi-annually shall be “issued and delivered” to an amount not exceeding five millions of dollars, as a “loan of public credit.” These bonds were to be denominated “Minnesota State Railroad bonds,” and the faith and credit of the state were to be pledged to the payment of the interest, and to redemption of the principal thereof. The bonds were to be issued in batches as construction progressed.

The amendment further provided that upon the completion of “any ten miles” of road, ready for ties, the governor on satisfactory evidence thereof, was to issue and deliver to the proper company bonds to the amount of one hundred thousand dollars; and a like amount when “any ten miles” of road should be actually completed, with cars running thereon; and so on, 196 for further ten mile sections. The state was thus “to loan its credit,” and see the good work go on without further concern.

As an assurance that no claim could ever arise against the state, the companies were bound, if they accepted the conditions of the act, to make provision for paying the special state bonds, interest and principal, when due. As security for faithful performance, they were to execute proper assignments of their net profits of operation, to pay interest as it should accrue; they were each to execute and deliver to the governor a deed of trust to the state of the first 240 sections (153,600 acres) of their lands, free from incumbrances; and the proceeds of all sales of these lands were to be applied to the payment of interest and principal, if defaulted, and to form a sinking fund to meet future defaults. Finally, “as a further security,” each company was required to transfer to the treasurer of the state an amount of its own first mortgage bonds, corresponding to the special bonds issued to it. These corporation bonds the governor was authorized to sell, in case of default by the companies; and he might also foreclose the mortgages in payment of interest on the special state bonds.

This elaborate amendment to section 10 of article 9 of the state constitution was submitted to the electors of the state on the 15th of April, 1858. For the six weeks intervening, the Loan Bill was the uppermost topic of public and private discussion. There was a remnant

of conservative men who did not lose their heads, and they pointed out with unerring foresight the weaknesses and vices of the bill, which experience later revealed to the mass of voters. The legislature had not mistaken the sentiment of their constituents, which had been voiced in numerous public meetings. The greatest effort made by those chiefly interested in ratification was to assure the people that in no conceivably probable event could the state have to come in and pay those bonds. Sixty-seven members of the two houses united in a published statement, pledging themselves individually and collectively to vote against any proposition to levy a tax either for the interest or principal of the proposed loans of public credit. “We claim,” they add, “to have removed all probable chance of taxation … and we shall resist, as one man, any proposition of the kind.”

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Senator Rice and thirty-eight Democratic leaders, including Joseph R. Brown and Franklin Steele, published a letter strongly urging ratification; but it cannot be said that the measure was Democratic. Gorman opposed it vigorously, and D. A. Robertson contributed to newspapers a series of strong and clear critical articles. A correspondent writes to Governor Ramsey, “Judge Cooper is raising the devil and making every possible effort to defeat the loan.” Mr. Sibley and Mr. Ramsey were both on the directorates of one or more companies and remained silent. The former certainly voted in the negative. The Pioneer and Democrat of St. Paul refrained from comment during the pendency of the bill in the legislature, but before the election advocated ratification in a series of editorial articles, reprinted in pamphlet form. The Republican organ at the capital, The Minnesotian, opposed the loan consistently from the earliest proposal, but the Republican party did not take ground against it.

The election was held as appointed. Few expected any such majority of votes for the loan as was shown by the official canvass, published on the 6th of May, being yeas 25,023; nays, 6,733. Only in a few rural counties were the nays the more numerous. The cities and towns, large and small, gave large majorities for the loan. In the city of Winona, out of

1,103 votes only one was cast in the negative, that of the Hon. Thomas Wilson, later chief justice of Minnesota.

All the people wanted railroads, for the best of reasons. These 25,000 who voted for the “loan of credit,” misled by public men who ought to have known better, deceived themselves into the belief that a loan of credit by the isue of bonds did not create a debt, unless in empty form. If the companies should ever default in payment of the state bonds, and their assigned “collateral” should prove insufficient, their confiscable property and franchises would certainly protect the state against ultimate loss.

The four corporations promptly accepted the conditions of the amendments, and immediately there was a great show of activity. By midsummer contracts were let and construction begun. On the 4th of August, Governor Sibley, who had promised in his inaugural message to hold the railroad companies 198 to a strict and yet reasonable compliance with law, gave them a formal notice to that effect, reciting the conditions of the loan of credit substantially as expressed in the constitutional amendment, with one deviation of importance. This was, that the first mortgage bonds of the companies, to be transferred to the state treasurer in exchange for the special state bonds, should have priority of lien over all other bonds which the companies might issue. The talk was that they would be likely to issue some $20,000,000.

Two days later the senate by resolution called on the judges of the supreme court for their opinion on the state of the law in this regard. Justice Flandrau, for the court, declined to depart from the traditional usage of deciding cases only as they arise in actual litigation. The Minnesota and Pacific railroad company by its attorney thereupon moved in the supreme court of the state that a mandamus issue commanding Governor Henry H. Sibley to accept its bonds in their usual form without stipulation of priority of lien. Counsel having been heard, the court on November 10th ordered that the mandamus issue, finding in the terms of the amendment no warrant for the demand of the governor. The bill had been purposely and most adroitly drawn so as to exclude such priority. The journals of

the houses show that propositions to secure priority to the state had been voted down. The state's bonds were “special bonds,” those of the company were not. It was merely obligated to transfer to the state an undistributed amount of first mortgage bonds, that is, as the court held, a bunch separated out of whatever mass of first mortgage bonds a company might issue in the course of its enterprises.

Governor Sibley, as advised by the attorney general, obeyed the order of the court, and presently issued and delivered to the plaintiff company state bonds to the amount then earned. He was counseled by friends to ignore the action of the court and assert the right of the executive, as a co-ordinate branch of the government, to act according to his own best judgment and discretion. Mr. Sibley was capable of such independence, but he doubtless decided to conform, not because the court had commanded, but because he was convinced that it had properly construed the law. He was severely criticised, both 199 for taking the position he did and for yielding to the court. Governor Sibley got little credit with political opponents, whose principal organ, The Minnesotian, charged that, interested as he was in the Minneapolis and Cedar Valley road, he was at least desirous to accept the bonds of the companies as offered, and therefore welcomed the mandamus. It is safe to say that this was but one of a long and continuous series of defamatory exercises in which that newspaper delighted.

It may be added that, but for the action of the Minnesota and Pacific Company, the other three companies would have acceded to the executive demands and made their bonds exchanged with the state a prior line. In fact, some issues had already been made in exchange for companies' bonds conceding the state's prior lien, though under protest. Had the companies conformed to Governor Sibley's demand and transferred to the state bonds securing to the state an exclusive prior lien, it may be questioned whether the outcome would have been materially changed. The mischief which resulted was not caused by any depreciation of the companies' bonds. They were never worth anything, and could not be in fact a “further security.”

The beginnings of construction in the late summer and fall of 1858 were continued in the following season, the contractors accepting from the companies the state bonds at a figure agreed upon, doubtless much below par. The decision of the supreme court had not contributed to maintain their value. About July 1, 1859, all the companies were in extremities. The special state bonds, their only resource, had sunk to such a figure as to be of no further use as collateral. They therefore advised their contractors to cease work, which they did.

The next six months was a period of dejection in Minnesota. The railroad system which in April, 1858, the people believed themselves to be calling into being by the magic loan of the state's credit, had appeared only to sink into chaos. Many persons who had performed labor, supplied subsistence, and furnished tools and materials for railroad construction, were unpaid, or were possessors of state bonds of uncertain and declining value. The distress caused by the continued scarcity of real money was much aggravated by considerable 200 issues of circulating notes by state banks, based on deposits of the special railroad bonds.

The first state legislature, which did not close its adjourned session till the middle of August, 1858, provided by law that there should be no further session till the first Wednesday in December, 1859, unless sooner convened by the governor. No extra session was called, and the second state legislature convened on the date prescribed. Its proceedings were looked forward to with great interest and some apprehension. Governor Sibley was still in office, and delivered his farewell message in person to the houses in joint convention.

The railroad bonds were of course the uppermost topic. The governor recited the issue and delivery of these bonds, in conformity to the constitutional amendment as judicially interpreted; their failure to acquire a market value, which he attributed to “the determined and mischievous efforts” of Minnesota citizens; the default of the companies to meet the interest as stipulated; and the suspension of work. He informed the legislature that the

companies had graded in all 239 miles and 1,893 feet, not very unequally divided, and that there had been delivered to them 2,275 one thousand dollar special bonds. These he declared to be a state obligation, voluntarily assumed. “Minnesota,” he said, “will not for a moment tolerate repudiation. Better, far better, that we be visited by pestilence or famine, for these are the instruments of God, for which we are not responsible.” Governor Sibley's simple, high-minded counsel was, immediately to acknowledge indebtedness, and emphatically to assure the holders of these bonds that the state would pay in full so soon as in condition to do so.

On January 1, 1860, Mr. Sibley was succeeded in office by Alexander Ramsey, who had been elected in the previous October over George L. Becker. In this message the matter of “transcendent importance” was the special state railroad bonds, which he declared ought to be “rightly adjusted and settled satisfactorily to all parties, upon principles of justice, equity and honor.” He submitted a plan for adjustment. Assuming that the state would acquire by foreclosure the properties and franchises of the four companies, he proposed that 201 new charters of liberal character be granted to parties who would undertake to build thoroughly and substantially 250 miles of road, the state agreeing to grant a bonus of $10,000 a mile in general state seven per cent bonds, always upon condition that an equal amount of special Minnesota railroad bonds be returned to the treasury for cancellation. The governor was informed that the greater part of these latter bonds were still in the possession or control of the companies, or of “their immediate representatives,” the contractors. His expectation was that their stockholders would immediately and eagerly accept the new charters and resume work. The greater proportion of the old bonds would thus be provided for. As for the small remainder, his proposition was to retire them by issuing to holders other general bonds, at a rate to be ascertained by the legislature. The constitution should be amended so as to reduce the amount of bonds for railroad purposes from five millions to two and a half millions.

With characteristic intuition, Governor Ramsey proposed this plan not as ideal, but as one which could be worked. His chief concern was to secure an immediate settlement.

Next to that he desired the immediate building of the railroads. He warned the legislature and the people, that if this vexed question were not settled, it would remain to disturb politics, divide the people, and occasion annual corruption in legislative halls. The end he declared would be as in other states; bond-holders, who had bought for a few cents on the dollar, would subsidize the press, raise the cry of repudiation, and knock year after year at the doors of the legislature, which, at length worn out by importunity, would vote them great fortunes. “Now,” said he, “now is the very time to settle, arrange and adjust these unfortunate and deplorable railroad and loan complications.” This man of common sense, amounting almost to genius, never counseled more wisely.

The legislature thus addressed, composed in great part of inexperienced men, was too completely saturated with an existing public sentiment, regarding these bonds, to give much heed to sound business counsel. The public had been assured, by none more emphatically than by the agents of the four companies, that the state railroad bonds were really evidences of 202 company debt, amply covered by company securities. The people took them at their word, and held them to the faith thus inculcated. The bonds were special bonds, known so to be by all takers, who took risks. They, the takers, were perfectly aware of this understanding on the part of the people, who had given expression to it at the election of April, 1858.

The Minnesota people of 1859, believing that they had been tricked by the companies into voting for an ambiguous constitutional amendment, could easily suspect that they never intended to build the roads, but only to do grading enough to secure $10,000 of bonds per mile. The report was widely spread that the grading done was in detached portions where work was light, that lines were excessively crooked, and grades much too steep, that the tracks were in places below high water mark; in short, that they were generally skimped and totally unfit for superstructure. In some places even the right of way had not been legally acquired. It was believed that certain experienced contractors had worked their will with the incompetent officials of the companies. Over all was the bald truth that all

the state had to show for two and a quarter millions of special bonds, to say nothing of the land grant, was 240 miles of discontinuous, ill-executed grading.

Imbued with this sentiment and sharing in it, the legislature appointed a joint committee of sixteen to consider and report on railroads, railroad grants, and Minnesota state railroad bonds. This committee was unable to come to any agreement. Six reports were submitted, each accompanied by a proposed constitutional amendment. One member, Senator Mackubin, alone proposed a full payment of principal and interest, but with an apparatus of redemption much too complicated to be comprehended by the wayfaring man. All other propositions contemplated “adjustment” and scaling down.

If the best heads of the two houses for such a business could come to no agreement, the members at large were less likely to, and they did not. Weeks passed in unprofitable discourses and projects. There was but one thing which that legislature could at length agree upon touching these bonds. It could, in sea phrase, simply “clap a stopper” on the whole proceeding, and leave successors to wrestle with the problem, which it had 203 vainly essayed to solve. It took two amendments to article 10 of the state constitution to effect this. The one was to expunge from the constitution the amendment of 1858, authorizing the loan of public credit by means of special bonds; the other was an addition to section 5 of the same article, declaring that any law to levy any tax or make provision for paying the special bonds should have no effect until adopted by a majority of electors voting thereon. Both these amendments were ratified November 6, 1860, the former by a vote of 19,308 to 710, the latter differing but slightly.

At this point mention must be made, and that only, of a series of events closely related to the Five Million Loan.

In the summer of 1860, Governor Ramsey foreclosed the mortgages of the defaulting railroad companies, and at the public sales bought all the properties and franchises of each for the sum of $1,000.

The legislature of 1861 generously restored them all to the same companies, requiring each to deposit with the state treasurer the sum of $10,000 as a guarantee fund.

One company, the Minnesota and Pacific (predecessor of the Great Northern Railway) put up the money and built fourteen hundred feet of track, over which it ran its first locomotive to a shed for storage. All the old companies now gave up. In the winter of 1861–62 four new companies were organized, and to them the legislature turned over the land grants under liberal conditions. These companies in the course of time built the contemplated roads.

The vote on the expunging and referendum amendments to the constitution was notice to all the world that the people of Minnesota would at least take time to consider on the payment of the bonds, in which they felt there was no equity. They numbered less than 175,000, but there was indignation enough for a million at the fraud which had been practiced on them.

The war of the slaveholders' rebellion came on, and during its continuance no claimant was absurd enough to waste effort in futile appeals. But no sooner was that struggle over and past, than the legislature began to be bombarded, as Governor Ramsey had predicted. In the session of 1866 bills were introduced 204 in both houses for the payment in full of the bonds. In the same winter an act was passed creating a commission to ascertain and report to the legislature the names of the bondholders, the amounts held by each, and their cost to the then present bona fide owners. The commission was also authorized to receive proposals for adjustment.

It was in the same year that the discovery was made that there were coming to the state 500,000 acres of public land, granted by a forgotten act of Congress in 1841 for internal improvements. No sooner was the favorable action of the general land office made known, than suggestions came from many quarters to devote these lands to paying off the old bonds. Governor Marshall in his message of January, 1867, voiced the

proposal, and urged the legislature to pay whatever might justly be due, by using the lands “providentially” placed at their disposal. They willingly responded by the passage of an act creating out of the proceeds of the sales of those lands a “state railroad bond sinking fund.” Whenever a sum of $20,000 should from time to time be accumulated, bondholders might bid for this cash, those taking who offered the most bonds for the least money.

Under the amendment of 1860 that act was referred to the people, who rejected it by a decisive vote. They did not feel sure that Divine Providence had destined those lands to paying for dead horses. It is highly probable that they were moved upon by the report of the state commission. That body listed 1,840 of the 2,275 bonds as reported to them by 106 holders, who, some under oath, and some not, gave the cost to themselves at prices ranging from “more than par” down to 17 ¶½ cents on the dollar. Thirteen persons or corporations held 1,414 bonds, and three persons 1,142.

The largest holder was Mr. Selah Chamberlain of Cleveland, Ohio, an important figure in the railroad history of the state. He held 967 bonds, which he averred had cost him “more than par value” in expenses of construction. A question being raised whether he had not been paid, by the three companies with whom he had contracted, excessive prices for work done, the commissioners employed a capable engineer to survey the 120 miles of grading done by him and estimate the 205 true cost at the time. The estimate of the expert showed the true cost at the time to have been $341,211, equal to $2,843.42 per mile. Mr. Chamberlain's bonds therefore appeared to have cost him a fraction over 30 per cent of their par value in work performed.

This revelation did not assure the people of honest administration of the credit they had generously loaned. The proposals for adjustment by holders were exceedingly variant; some demanded all that was “nominated in the bond,” others a certain per cent, and a few were willing to take whatever might be allowed to the most favored owners.

The winter of 1868 passed without legislative action, but the session of 1869 was much occupied with a scheme of settlement embodied in the so-called “Delano bill,” which, having passed both houses, was presented to the governor on the last day of the session. Governor Marshall declined to give the bill his approval, doubtless for the reason that it proposed to turn over the 500,000 acres of internal improvement lands to the one person for whom the bill had been named, and to give him thirteen years in which to buy up the bonds at his own prices.

Governor Marshall in a special message again urged the legislature to devote “the lands” to the payment of “the bonds.” Again he suggested that “providentially the state had in her hands the means of providing for whatever was justly due the holders.” Michigan had adjusted a railroad debt of twice the amount, and Illinois one six times as great. The regents of the State University had paid off a debt of $125,000 with 14,000 acres of land, an encouraging example. He appealed to a great party pledged to equity and justice, to add to its proud record. In his last message, delivered to the legislature of 1870, the same high-minded executive repeated the substance of the special message of the previous winter, again expressing his conviction that “the lands” had been “providentially” reserved to pay off these bonds.

The legislative bodies appear to have been moved by the executive appeals, and set about framing an act for the purpose. When passed, it provided for the virtual exchange of bonds, at par value, for land at $8.70 per acre. The 500,000 206 acres at that price would yield $4,250,000, just about enough to redeem the bonds. The lands turned over were to remain free from taxes for ten years, if left wild so long. This act, as required by the amendment of 1860, was referred to the people, and was ratified by a vote of 18,257 to 12,489.

But again, the bondholders, the high-minded governor, and many citizens, were disappointed. It was a condition of the act that it should not go into operation unless at least 2,000 bonds should be deposited for exchange. Only 1,032 bonds, including those of

Mr. Chamberlain, were turned in. At a meeting held in New York, September 1, 1870, the holders of 1,080 bonds resolved “to respectfully decline an offer of less than 25 per cent of their just claims against a debtor able to pay in full.”

A year passed and Governor Austin, fresh from the people, expressed for them, in his first message, their surprise at the refusal of the bondholders to accept “so fair and equitable a compromise.” “The bonds,” he said, “are of questionable validity, and, if not actually fraudulent, are so intimately connected with what the great majority of the people believe to have been a fraud upon the state, as to make them odious. … A large proportion of the bonds cost their present owners but 17 ½ to 50 per cent of their face.”

The legislature of 1871, however, was not indifferent to the clamors of the bondholders and the demands of citizens for some kind of settlement. A bill known as “the Chamberlain bill” was brought forward, and in spite of the absorbing interest of that legislature in the “land-grab” measure for dividing the 500,000 acres among certain railroad companies, which Governor Austin put to sleep by his famous veto, the Chamberlain bill was hospitably treated, amply discussed, and finally enacted.

The leading part in the debate was taken by General Sibley who had consented to leave his retirement to throw his influence and vote in the House of Representatives for some reasonable plan of settling the bond question. His speech was prepared with care, both in English and French, and was reduced to the smallest compass consistent with clearness. He related the story of the issue of the bonds, and the great pains 207 he had taken, as governor at the time, to require exact and full compliance by the railroad companies with all lawful conditions. He had waived his executive prerogative and obeyed the mandamus of the supreme court. The bonds when issued were rendered valueless by the unholy warfare waged upon them by citizens of the state. The state ought to pay “every cent” of principal and interest. In his peroration General Sibley declared that but for his abiding faith that Minnesota would acquit herself in the premises, he would transfer himself to some community where he would not be subjected to the “intolerable humiliation” of

citizenship in a “repudiating state frowned upon by a just and righteous God, and abhorred by man.” Although a member of the minority, Sibley's influence overcame opposition, and assured the passage of the bill.

The act as approved was prefaced by a preamble asserting that doubts prevail whether the state railroad bonds are a “just and valid debt of the state,” and that the purpose is to determine that question and adjust existing claims. The governor was authorized to appoint three lawyers as commissioners, having the powers of referees in equity procedure. The first duty of the commission was to determine whether the bonds deposited were “a legal and equitable obligation against the state.” Should they decide in the affirmative, they were thereupon to award the amount due each bondholder on the basis of their cost to him. The act provided for the issue of new 30-year bonds, with additions of principal so figured in as to make the interest seven per cent, and appropriated all railroad taxes to the payment of such interest, any surplus thereof to form a sinking fund for the extinguishment of the principal. It may be surmised that some votes were cast for this law by members who, without any gift of prophecy, could foresee what fate would meet it at the polls. The Minnesota electors in November, 1871, declared their unalterable resolution not to be taxed for the bonds.

The legislature now had rest for about five years from wrestling with the bond question. At the annual election of 1872, according to Governor Austin's urgent recommendation, the voters ratified an amendment to the constitution forbidding the appropriation of the proceeds of sales of the 500,000 acres of internal improvement lands for any purpose until after 208 an affirmative majority vote of electors upon any enactment therefor, the people thus reserving to themselves the privilege of deciding upon the destination by Providence or otherwise of that grant.

In the meantime the matter was taken into the courts. In 1873, Mr. Selah Chamberlain brought suit in the United States Circuit Court for the district of Minnesota against the St. Paul and Sioux City Railroad Company and others, demanding a decree in equity

that the company should redeem the state bonds held by him, because it had come into possession, by gift of the state, of a portion of the land grant of 1857. It was contended that where the state acquired title and possession by foreclosure in 1860, she took the lands and property of the railroad companies with all their incumbrances. As assets, they were affected by all lawful liabilities. After trial, Justice Dillon dismissed the suit. The companies, he held, received the lands from the state free and clear from all incumbrances. The state was not a surety for the companies, but an original obligee.

Mr. Chamberlain lost his suit, but the court vouchsafed him a sweet morsel of consolation in an obiter dictum. The bonds, said Justice Dillon, “are the legal obligation of the State … they were issued for work actually done upon the the roads at the rate specified in the constitutional amendment. … If the state were liable in the courts … the bonds would be legally enforceable against it. Justice and honor alike require the court to recognize these bonds as binding against it.”

Believing doubtless that he could fare no worse in the court above, Mr. Chamberlain appealed his suit to the supreme court of the United States, which in October, 1875, affirming the decision of the court below, followed its example in administering like words of comfort. “The bonds issued,” said Justice Field for the court, “are legal obligations; the state is bound by every consideration of honor and good faith to pay them. Were she amenable to the tribunals of the country, as private individuals are, no court of justice would withhold its judgment in an action for enforcement.”

It is believed that Mr. Chamberlain's capable attorneys got all they really hoped for in their suit. These causal remarks 209 of the courts were not decisions. The state was no party to the suit, and was not heard. These obiter dicta had their effect. The state of Minnesota was branded by the supreme judicial authority of the nation as a repudiator and defaulter. She had not done what honor and justice alike required her to do. The effect on the public men of the state was notable. Without distinction of party, they rapidly drifted to the position that Minnesota could not afford to wear that brand of infamy. The mass of the

people, however, still hung doggedly to their ancient grudge against the conspirators, who, as they believed, had deceived and defrauded them.

Governor Davis was closing his term of office with the year 1875, a few weeks after the publication of the dicta of the courts. In his final message to the legislature of 1876, after sketching the history of the bonds, he recommended the creation of a board of commissioners to hear and determine the claims of the bondholders, and expressed the belief that the people would stand by the awards. States, as well as men, ought to do justice, and it was no derogation of sovereignty to submit claims against them to arbitration. The United States and Great Britain had composed the Alabama claims that way.

According to Minnesota custom, Governor Pillsbury delivered his inaugural address on the same occasion, and the burden of it was the extinguishment of the state railroad bonds. The bonds were issued deliberately in due form in obedience to a mandate of the people. The state had acquired the franchises and assets of the defaulting companies and had them under her control. She is now able to pay, and the only question is, Will she pay an honest debt? His practical suggestion was to exchange new bonds for the old ones, and to devote the internal improvement lands (which, he adds, have been “providentially” received and kept for the express purpose) to form a sinking fund for the ultimate liquidation of the new obligations. There was no suggestion of compromise or scaling down the bonds.

The legislators, who listened to these recommendations, gave them not the least regard. They evidently did not feel sure that Providence had invited them to dispose of the internal improvement lands in this particular manner. Not a single 14 210 bill, resolution, or report relating to the bonds, is recorded in their journals.

In his message to the legislature of 1877, Governor Pillsbury returned to the charge with vigor. Under the heading “Dishonored Bonds,” he recapitulated the arguments, all now

familiar, for the settlement of the old bonds. Again he put the question, “Is Minnesota willing to pay an honest debt?”

On February 10, 1877, Mr. Selah Chamberlain presented to the houses a memorial reciting the history of his claim, quoting the opinions of judges upon its validity, and offering to scale it down. He figured the nominal value of each of his bonds on June 1, of that year, to be $3,110.85 (interest evidently compounded); and, doubtless acting for other bondholders as well as for himself, he made the offer to accept for each the sum of $1,550 in six per cent bonds to be issued of that date. Before the close of the month a bill was passed agreeing to this proposition, by a senate vote practically unanimous and a house majority of more than two-thirds. A companion bill devoting the internal improvement lands to the payment of the proposed new bonds became a law. Both acts had of course to run the gauntlet of a popular vote; and both were mercilessly slaughtered at the polls.

The legislature of 1878 listened patiently to Governor Pillsbury's paragraphs on “Dishonored Bonds.” He deeply deplored the rejection of the proposition of the bondholders, and exhorted to further effort. Repudiation, he assured them, was far more damaging to the state than the grasshopper. With little hope of its ratification the houses passed a bill to exchange “the lands for the bonds,” differing only in details from the act of 1877. It shared the fate of that act on referendum.

In his message of 1879, Governor Pillsbury could only express his deep regret at the unreadiness of the people to pay an honest debt, and made no definite proposition. There was no session in 1880, the act for biennial sessions having gone into effect. The year 1881 was the last of Mr. Pillsbury's third term, and he resolved to signalize it with a final effort to rouse the people and their representatives to their duty. Again under the caption “Dishonored Bonds,” he marshaled all the 211 considerations which should impel them to payment of their honest debt. He implored the legislative body to apply itself to the adjustment of the bonds as its solemn duty, and suggested that in the preservation of the half million acres of land, it seemed as if Fortune (not Providence) herself would lure the

state from dishonor. The executive appeal had its effect upon the houses which presently got to work on the necessary bills.

The principal act, passed by a two-thirds vote in the senate and a three-fourths vote in the house, is a curiosity in legislation. It started out with a preamble reciting that there were controverted claims outstanding against the state, that these deserved fair treatment and settlement, and that claimants had submitted propositions for adjustment. A “tribunal” consisting of the judges of the supreme court was created, the original duty of which should be to decide whether the legislature had power to adjust and pay the bonds without the referendum provided for in the repudiating constitutional amendment of 1860. If any judge of the supreme court should be disqualified or should decline, the governor was authorized to fill the vacancy by appointing one of the district judges of the state. In the event that the tribunal should decide against the validity of the repudiating amendment of 1860, it should proceed to exchange new bonds, styled “Minnesota Railroad Adjustment bonds,” for those outstanding, at 50 per cent of the amount due on the latter, the bondholders each to execute a proper release. If, however, the decision should be that the question of paying the old bonds must be submitted to the people, the act was to be so submitted at the next general election. If adopted by a majority of electors, then the exchange of new for old bonds would follow.

Not one of the five judges of the supreme court was willing to serve on this amphibious tribunal. As the law provided, the governor therefore appointed five judges of the district court in their places. It was the 26th day of July when five district judges, willing to serve and supposed to be individually favorable to sustaining the act, met at the capitol to organize as a tribunal.

The bondholders appeared by counsel, and Attorney General Hahn for the state. The latter at once filed an objection 212 against the competency of the tribunal. At the same moment the members were served with an order from the State Supreme Court to show cause why a writ of prohibition should not issue. This order had been made upon information

of a distinguished attorney, Mr. David Secombe, alleging that the act of the legislature pretending to constitute such a tribunal was unconstitutional. The attorney general was allowed to control the procedure, and to amend the petition for the writ, by adding an allegation that the act was repugnant to the constitutional amendment of 1860 forbidding payment of the bonds unless after an affirmative vote of the people. Under the title of "State vs. Young," the proceedings in the supreme court occupy 121 pages of the 29th volume of the Minnesota reports. The court in its opinion, written by Chief Justice James Gilfillan, acknowledged the signal assistance of counsel on both sides, declaring that "it has rarely been the good fortune of any court to have a cause before it so ably and exhaustively presented by counsel."

This is perhaps the most celebrated of all cases which had up to this time come before the court and probably will long remain so. It is not difficult for the careful reader to get at the meat of this decision. The act of 1881, it was held, was not unconstitutional because in conflict with the repudiating amendment of 1860, for that repudiation itself was void. When the state contracted with the bond-buyers in 1858, the right of petition to the legislature existed, and the legislature was at liberty and indeed was bound to provide for the payment of any obligations already incurred. By depriving the legislature of this power, the putative amendment of 1860 "impaired the obligation" of the contracts, a thing forbidden to the states by the national constitution. This conclusion, seriously questioned by able lawyers, was most welcome to all who desired the payment of the old bonds without appeal to popular vote.

The court, taking up the contention that the act in issue was unconstitutional because devolving judicial functions on a non-judicial tribunal, promptly decided in the affirmative, and issued the writ of prohibition.

The roadway was clear for legislative action on the bonds without referendum. Believing that the legislature would be 213 in the right frame of mind, Governor Pillsbury called it to meet in extra session on October 11. In this expectation he was not disappointed, and

soon had the satisfaction of approving a bill passed by very large majorities, after a little filibustering by the dwindling minorities. It would be well for the fair fame of Minnesota if it could be truthfully recorded that this legislation did not cost bondholders a considerable sum of money.

The act was entitled “An act to provide for the adjustment of certain alleged claims against the state,” as if it were to be understood that the propositions of compromise, voluntarily made by the bondholders, did not rise to the dignity of “claims” pure and simple. The now customary preamble introduced the act, which briefly provided for the delivery to any of the bondholders new ten to thirty-year four and a half per cent bonds, called “Minnesota State Railway Adjustment Bonds,” at 50 per cent of the nominal value of the old bonds. A companion bill, devoting the proceeds of sales of the “providential” internal improvement lands to the liquidation of the new bonds, met with but slight opposition. When voted upon at a subsequent general election, the two acts were ratified by more than two-thirds of the electors, which indicates a change of heart among the people. The signing of the new bonds occupied the last days of Mr. Pillsbury's governorship, a duty he performed with greater satisfaction than any other in his long period of executive service.

The passage of the two bills, however, did not conclude the long struggle over the bonds. There were citizens then, as now, who believed that the bonds, no matter with what regularity and solemnity issued, never created a valid obligation against the state in equity, and never ought to have been recognized nor adjusted. One of these, Mr. David Secombe, sued out an injunction from a court commissioner to restrain the governor from signing the new bonds, to which the latter gave no heed. The same plaintiff later played a last card by bringing an action in the Hennepin county district court to restrain the state treasurer from paying interest on the new bonds. The ground of the action was the allegation that the constitutional amendment of 1858 purporting to authorize the original issue was void because not adopted by the people according to the provisions of the state constitution regarding amendments. 214 The pretended amendment was proposed, voted on, and proclaimed as adopted; before the admission of the territory of Minnesota to the Union,

and while such admission was pending in Congress. The territory of Minnesota, it was contended, could not amend a state constitution, which had not been accepted and ratified by Congress.

Justice Mitchell, for the court, made short work of resolving this puzzle, by citing the peculiar language of the Minnesota enabling act, authorizing the people “to form a constitution and state government,” and “to come into the Union.” The court observed that it was the accepted theory of the time, that Minnesota became a state when she ratified her constitution in October, 1857, and that the legislature then elected was a state legislature. The court, however, did not care for any theory of the matter. The government organized in the December of 1857 was in fact a state government, by the consent and understanding of the people, and technical inquiries regarding irregularities were not, under the circumstances, to be tolerated. Finally it was held that all irregularities had been healed by the Congressional act of admission. This same decision vindicated the legitimacy of the laws (some ninety in number) passed by the legislature of 1857–8 at its first session.

During the twenty-three years between the issue and adjustment of the state railroad bonds few citizens of Minnesota lost sleep because of guilty consciences, and the financial credit of the state was not below that of any of her neighbors. Within a year from the passage of the adjustment act, all but forty-three of the old bonds had been surrendered, of which number fifteen had long been in the treasury. The value of the new bonds issued was $4,255,000. A large block of these was purchased for the school and university funds, and the cash paid to claimants. Mr. Selah Chamberlain took out $1,992,053.70; three others, $715,000; and the remainder was distributed to 175 parties.

On December 8, 1910, the last Minnesota Refunding Bonds, successors to the Redemption Bonds of 1881, to the amount of $180,000, were solemnly burned in the

engine house of the State Capitol. With that ceremony closed the last chapter of the “Five Million Loan.”